

Message Text

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C O N F I D E N T I A L USUN 2060

FROM LOS DEL

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS: SIT REP FOR JUNE 24

1. COMMITTEE I. DISCUSSION FOCUSSED ON ARTICLE 41 AND
ANNEX II (THE ENTERPRISE), AS DRAFTED BY EVENSEN.
EVENSEN INCORPORATED THE U.S. LOAN GUARANTEE PROPOSAL
AS A KEY ELEMENT IN START-UP FINANCING FOR THE ENTER-
PRISE. KUWAIT AND QATAR BOTH OPPOSED THE NOTION THAT
ALL NATIONS SHOULD SHARE THE BURDEN OF LOAN GUARANTEES
IN PROPORTION TO THE UN SCALE OF ASSESSMENTS. INSTEAD,
THEY SUGGESTED THAT ONLY SEA BED MINING COUNTRIES SHOULD
BEAR THE BURDEN OF GUARANTEEING DEBT OF THE ENTERPRISE.

2. CONCERNING THE STATUTE OF THE ENTERPRISE (ANNEX II),
EVENSEN CHANGED HIS SUGGESTED TEXT SO THAT THE ENTERPRISE
WOULD BE REQUIRED TO SELL ITS PRODUCTS AT NOT LESS THAN
INTERNATIONAL MARKET PRICES. HOWEVER, HE DID NOT CHANGE
THE PROVISION WHICH WOULD EXEMPT THE ENTERPRISE FROM
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ANY INTERNATIONAL TAXES EXCEPT IN THE CASE THAT THE ENTER-
PRISE ITSELF DECIDES TO WAIVE ANY OF ITS PRIVILEGES AND
IMMUNITIES. THE U.S., SUPPORTED BY MOST INDUSTRIAL COUNTRIES,
ACKNOWLEDGED THAT THE ENTERPRISE MIGHT ENJOY CERTAIN
PRIVILEGES AND IMMUNITIES BECAUSE OF ITS UNIQUE STATUS.
NEVERTHELESS, WE HAVE CAUTIONED THAT THESE SPECIAL EXEMPTIONS
OUGHT TO BE STRICTLY LIMITED TO THOSE REQUIRED FOR ITS

EFFICIENT OPERATION. FURTHERMORE, THE ENTERPRISE SHOULD NOT ENJOY SUBSTANTIAL TAX ADVANTAGES OVER COMPETING STATE MINING ENTITIES.

3. THE ISSUE OF PRIVILEGES AND IMMUNITIES IS RELATED TO THE LARGER QUESTION OF THE ENTERPRISE'S STATUS WITHIN THE AUTHORITY. LDCS ARGUE IN SUPPORT OF EVENSEN'S CHARACTERIZATION OF THE ENTERPRISE AS AN ORGANIZATION "WITHIN THE FRAMEOWRK OF THE INTERNATIONAL LEGAL PERSONALITY OF THE AUTHORITY", THUS ENJOYING THE SAME PRIVILEGES AND IMMUNITIES AS THE AUTHORITY. AS THE EC COUNTRIES AND JAPAN ARGUED, THE AUTHORITY SHOULD BE REGARDED AS AN INTERNATIONAL ORGANIZATION, BUT THE ENTERPRISE SHOULD BE GOVERNED ESSENTIALLY BY COMMERCIAL LAW, NOT DIPLOMATIC CUSTOM. THE ANALOGY FREQUENTLY CITED IN DEFENSE OF THE LATTER INTERPRETATION IS THAT OF A STATE-OWNED ENTERPRISE IN RELATION TO A GOVERNMENT MINISTRY.

4. COMMITTEE III. PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT. THE INFORMAL WORKING GROUP CONCENTRATED ON ART.21 (COASTAL STATE STANDARD SETTING). AN AMENDMENT TO 21(2) BY THE FRG TO ALLOW FLAG STATES TO ESTABLISH LAWS FOR THEIR VESSELS ONLY AS EFFECTIVE AS "GENERALLY ACCEPTED" INTERNATIONAL RULES, RECEIVED SUPPORT FROM SEVERAL MARITIME AND DEVELOPING STATES BUT WAS OPPOSED BY U.S. A U.S. COMPROMISE AMENDMENT TO REQUIRE FLAG STATE LAWS TO SPECIFICALLY INCLUDE THE REQUIREMENTS OF GENERALLY ACCEPTED INTERNATIONAL RULES
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RECEIVED SOME SUPPORT. AN ATTEMPT BY CHAIRMAN VALLARTA (MEXICO) TO DISCUSS U.S. AMENDMENT TO 21(3) (COASTAL STATE STANDARD SETTING AUTHORITY IN THE TERRITORIAL SEA) WAS STYMIED BY MARITIME STATES'PROCEDURAL ARGUMENT THAT THE SUBJECT WAS UNDER DISCUSSION IN COMMITTEE II AND THEREFORE BEYOND THE MANDATE OF COMMITTEE III. THE SUBSTANCE OF THE U.S. AMENDMENT, PROVIDING BROADER COASTAL STATE STANDARD SETTING AUTHORITY IN THE TERRITORIAL SEA WAS SUPPORTED BY CANADA AND A FEW OTHER STATES. AN AMENDMENT BY THE UNITED KINGDOM LIMITING COASTAL STATE STANDARD SETTING AUTHORITY RECEIVED BROAD SUPPORT.

5. THE DISCUSSION OF 21(4) (COASTAL STATE STANDARD SETTING IN THE ECONOMIC ZONE) WAS INCONCLUSIVE WITH A MAJORITY OF STATES EMPHASIZING THAT THE BALANCE ESTABLISHED IN THIS PARAGRAPH SHOULD NOT BE ALTERED. TIME PERMITTED ONLY A BRIEF DISCUSSION OF 21(5) (SPECIAL ISSUES) IN WHICH INDIA AND ECUADOR VOICED OBJECTION TO THE PRESENT TEXT AND FAVORED BROADER COASTAL STATE AUTHORITY.

6. COMMITTEE II - THE DELIBERATIONS OF COMMITTEE II
RESUMED TODAY WITH A CONTINUATION OF THE DISCUSSION

OF THE CANADIAN AMENDMENT (DELETION) TO ARTICLE 20(2).
THERE WERE EIGHT INTERVENTIONS, WITH MOST DELS
EXPRESSING SUPPORT FOR A REVISION WHICH WOULD INCORPORATE
THE AUSTRALIAN, MOROCCAN, OR KENYAN AMENDMENTS AND/OR
STATED A PREFERENCE FOR THE TEXT OF THE RSNT.

7. BELGIUM TABLED AN AMENDMENT TO ARTICLE 24 WHICH
WOULD REPLACE AT THE END OF THE FIRST SENTENCE
OF PARAGRAPH 3 THE PHRASE QTE TO PROTECT ITS SECURITY
UNQUOTE BY QTE FOR REASONS OF SECURITY UNQTE. THE OBJECT
OF THIS AMENDMENT, BELGIUM DECLARED, WAS TO BALANCE THE
SECURITY OF THE SOVEREIGN STATE WITH THE SAFETY OF THE
SUBJECT VESSEL WITHIN THE CONTEXT OF INNOCENT PASSAGE
THROUGH THE TERRITORIAL SEA. THE AMENDMENT WAS SUPPOR-
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TED BY 28 STATES AND ONLY ONE STATE (CAMEROON) WAS IN
OPPOSITION.

8. COLOMBIA, CHARACTERIZING THE CONCEPT OF THE
CONTIGUOUS ZONE AS SUPERFLUOUS, SUGGESTED THE DELETION
OF ARTICLE 32 IN ITS ENTIRETY. SIXTEEN DELS OPPOSED
ITS DELETION AND 7 SUPPORTED COLUMBIA. COLUMBIA THEN
SUGGESTED THAT IT WOULD NOT OPPOSE RETENTION OF THE
PROVISION PROVIDED THAT THE EXTENT OF THE CONTIGUOUS
ZONE IS 12 MILES.

9. DENMARK PROPOSED AN AMENDMENT TO ARTICLE 67 WHICH
WOULD RESTRICT THE RIGHTS OF STATES TO LAY PIPELINES
ON THE CONTINENTAL SHELVES OF COASTAL STATES BY MAKING
THIS RIGHT CONTINGENT UPON THE CONSENT OF THE COASTAL
STATE. THIS SUGGESTION WAS OPPOSED BY NORWAY.

10. THE FINAL SEGMENT OF THE MEETING FOCUSED ON A
PROPOSAL BY ECUADOR TO INSERT AS ARTICLE 64 BIS THE
FAMILIAR GRANDFATHER PROVISION WHICH WOULD VALIDATE
AND LEGALIZE AS IN CONFORMITY WITH A FUTURE CONVENTION
QTE NATIONAL LEGISLATION ENACTED PRIOR TO THE CONVENTION
WITH RESPECT TO AREAS BEYOND 12 NAUTICAL MILES AND NOT
EXCEEDING 200 MILES UNQTE PROVIDED THAT QTE THESE LEGIS-
LATION ARE IN CONFORMITY WITH THE OBLIGATIONS
UNDERTAKEN BY STATES IN ACCORDANCE WITH THE PRESENT
CONVENTION UNQTE. THIS NOT SO SUBTLE ATTEMPT TO LEGALIZE
THE 200-MILE TERRITORIAL SEA WAS SUPPORTED BY 14 STATES
AND OPPOSED BY 19.
MCHENRY

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